

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSHUA J. BURKE,

Plaintiff,

Case No. 2:24-cv-11632

v.

Honorable Susan K. DeClercq
United States District Judge

LENAWEE COUNTY JAIL,

Defendant.

**ORDER DISMISSING CASE *SUA SPONTE* FOR FAILURE TO
PROSECUTE AND FAILURE TO PAY FILING FEES**

Plaintiff Joshua Burke filed this lawsuit and sought permission to proceed without prepaying to do so. But his application demonstrated that he could afford to pay the filing fee yet had not paid, so he was directed to pay the fees. ECF No. 5 (citing *Boussum v. Washington*, 649 F. Supp. 3d 525, 529 (E.D. Mich.), *recons. denied*, 655 F. Supp. 3d 636 (E.D. Mich. 2023)). Plaintiff was also explicitly told that if he failed to pay the fees, then his complaint would be dismissed under 28 U.S.C. § 1915(b), (e)(2)(A) and Civil Rule 41(b) for failure to prosecute. *Id.* Plaintiff's deadline was August 1, 2024. *See* FED. R. CIV. P. 6(d).

He has not prepaid the fees or properly requested an exemption. Therefore, this Court must presume that he is proceeding without prepayment, assess the whole fee, and dismiss the case for failure to prosecute. *McGore v. Wrigglesworth*, 114

F.3d 601, 605 (6th Cir. 1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199, 203 (2007). “If the case is dismissed under these circumstances, it is not to be reinstated to the district court’s active docket”—even if the plaintiff attempts to pay the filing fees. *Id.*; *see also Baxter v. Rose*, 305 F.3d 486, 489 (6th Cir. 2002) (holding that *McGore* applies “where the district court dismisses cases *sua sponte* under 28 U.S.C. § 1915A”), *abrogated on other grounds by Jones*, 549 U.S. 199; *see also Redd v. Redmon*, 215 F.3d 1327 (6th Cir. 2000) (unpublished table decision) (same for cases dismissed “under § 1915(e)(2)(A)”; *Boussum v. Washington*, 655 F. Supp. 3d 636, 642 (E.D. Mich. 2023) (same for cases dismissed under 28 U.S.C. § 1915(b)).

Accordingly, it is **ORDERED** that Plaintiff’s Complaint, ECF No. 1, is **DISMISSED**. *See* 28 U.S.C. § 1915(b), (e)(2)(A); FED. R. CIV. P. 41(b).

Further, it is **ORDERED** that the Complaint is **PROHIBITED** from being reinstated to the district court’s active docket—even if Plaintiff pays the filing fees.

Further, it is **ORDERED** that Plaintiff is **DENIED** leave to proceed *in forma pauperis* on appeal. *See* 28 U.S.C. § 1915(a)(3).

This order closes the above-captioned case.

/s/Susan K. DeClercq
SUSAN K. DeCLERCQ
United States District Judge

Dated: 8/2/2024